

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

COTT BEVERAGES INC.

and

Case 16-CA-181144

JOSEPH KELLY

ORDER

The Respondent's Motion for Partial Summary Judgment seeking dismissal of the complaint allegations regarding the Respondent's policy that prohibits employees from having personal cell phones on the manufacturing floor or at employee work stations is denied. The Respondent has failed to establish that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law.¹ This denial is without prejudice to the Respondent's right to renew its arguments to the administrative law judge and before the Board on any exceptions that may be filed to the judge's decision, if appropriate.

Dated, Washington, D.C., May 24, 2017.

PHILIP A. MISCIMARRA, CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

¹ Chairman Miscimarra agrees with the denial of the Respondent's motion as stated in the Board's Order. As he stated in *L'Hoist North America of Tennessee, Inc.*, 362 NLRB No. 110, slip op. at 3 (2015) (concurring), "[I]n response to a motion for summary judgment, I believe that the General Counsel at least must explain in reasonably concrete terms why a hearing is required. Under the standard that governs summary judgment determinations, this will normally require the General Counsel to identify material facts that are genuinely in dispute." See also *Leukemia & Lymphoma Society*, 363 NLRB No. 124, slip op. at 2 (2016) (then-Member Miscimarra, dissenting). In the instant case, the General Counsel has described, in reasonably concrete terms, why, based on material facts that are genuinely in dispute, a hearing is required.